

HEADQUARTERS UTAH NATIONAL GUARD
Office of the Adjutant General
Post Office Box 1776
Draper, Utah 84020-1776

UTNG Regulation 27-3

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LEGAL ASSISTANCE

CHAPTER 1

GENERAL

	Paragraph	Page
Purpose.....	1-1	1-1
Policies.....	1-2	1-1
Explanation of Terms.....	1-3	1-1
Legal Assistance Office	1-4	1-1
Legal Assistance Officer.....	1-5	1-1
Persons Eligible	1-6	1-2
Ethics	1-7	1-2
State Staff Judge Advocate (SSJA)	1-8	1-2
State Judge Advocate (StJA)	1-9	1-3
Major Subordinate Command Staff Judge Advocate (MSCSJA).....	1-10	1-3
Command and State Responsibility	1-11	1-3

CHAPTER 2

UTARNG LEGAL ASSISTANCE PROGRAM

Services	2-1	2-1
Limitations	2-2	2-4
Court Representation	2-3	2-4
Preventive Law	2-4	2-6

*This regulation supersedes UTNG Reg 27-3 dated 1 November 1995

CHAPTER 1

GENERAL

1-1. PURPOSE.

a. This regulation prescribes policies and procedures to be followed in the Utah National Guard for providing legal advice and assistance to Guard members and employees, and to other eligible persons, regarding their personal legal affairs.

b. This regulation is applicable to all units in the Utah Army National Guard (UTARNG).

1-2. POLICY. It is beneficial to morale, efficiency and mobilization readiness to provide a command-wide legal assistance program aimed at providing eligible persons with trained legal advice regarding personal legal problems.

1-3. EXPLANATION OF TERMS.

a. AG - The Adjutant General, Utah National Guard.

b. JA - Judge Advocate.

c. Member - AGR, Technician Personnel or part-time member.

d. Dependent - Lawful spouse, unmarried child under age 18, including adopted or stepchild or dependent child (50% support).

e. SJA – Staff Judge Advocate.

f. SSJA - State Staff Judge Advocate, Utah National Guard.

g. StJA - State Judge Advocate, the full-time AGR legal officer for the Utah National Guard.

h. Major Subordinate Command SJA – the senior Staff Judge Advocate assigned to a major subordinate command.

1-4. LEGAL ASSISTANCE OFFICE. Any unit of the Utah National Guard with an officer assigned to the Judge Advocate General's Corps is a legal assistance office.

1-5. LEGAL ASSISTANCE OFFICER. Any officer of the Utah National Guard assigned to the Judge Advocate General's Corps, or a non-JAG who is, approved by the SSJA, to temporary duty as a Legal Assistance Officer is a legal assistance officer.

1-6. PERSONS ELIGIBLE. Legal assistance will be provided to members of the Utah National Guard, commensurate with available resources, in the following priority:

- a. AGR personnel.
- b. Part-time UTNG members.
- c. Dependents of a., above.
- d. Dependents of b., above.
- e. Retired UTNG members.
- f. Dependents of e., above.

1-7. ETHICS.

a. The Utah State Bar Revised Rules of Professional Responsibility apply except where clearly inconsistent with this regulation.

b. Privilege. Communications between attorney and eligible person are privileged. Personnel designated in this regulation as authorized to provide legal assistance will carefully guard the attorney-client relationship and treat all communications and information from the eligible person as privileged. Clerical personnel, as well as personnel with supervisory responsibilities over legal assistance offices, are required to maintain the same strict standards of confidentiality as the JA. These personnel will be carefully instructed as to the nature and extent of privileged communications. No one may order the breach of the attorney-client relationship. Only the eligible person may authorize the disclosure of privileged matters. Authorization to disclose privileged matters should be made in writing and a copy retained by the JA. Strict observance of the communication privilege is essential to the program in order to:

(1) Establish that all personnel, regardless of grade or position, may talk frankly and completely about all material facts of their cases to those persons providing legal assistance without fear that their confidences will be disclosed or used against them.

(2) Establish confidence in the integrity of the program.

1-8. STATE STAFF JUDGE ADVOCATE (SSJA). The SSJA will supervise legal assistance activities. S/he performs a role like that of the senior partner in a law firm. S/he is authorized to review all office administrative activities and procedures.

1-9. STATE JUDGE ADVOCATE (StJA). The StJA will provide day-to-day legal assistance to Active, National Guard, Reserve, and retired service members and their eligible dependents as

well as acting as counsel for the Adjutant General of Utah, on a daily basis.

1-10. MAJOR SUBORDINATE COMMAND STAFF JUDGE ADVOCATE (MSCSJA).

a. The MSCSJA will perform his or her duties under commands to which s/he is assigned or attached acting as counsel for that commander and staff.

b. MSCSJA will represent eligible persons only to the extent reasonably necessary for the JA to perform his or her assigned duties within the guidelines of this regulation. A JA may not, without the permission of the SJA, represent or advise service members so as to enter into an attorney-client relationship regarding matters which are outside the scope of legal assistance.”

1-11. COMMAND AND STATE RESPONSIBILITY. A JA assigned to State Headquarters, UTARNG, will provide legal assistance to all eligible persons belonging to STARC and units or major commands without a JA or Legal Assistance Officer, or to other eligible persons on an emergency basis.

CHAPTER 2

UTARNG LEGAL ASSISTANCE PROGRAM

2-1. SERVICES.

a. A JA will, as a minimum, make the following services available to eligible persons:

(1) Domestic relations. General advice on the legal and practical meaning of divorce, legal separation, annulment, custody, and paternity may be provided. Representation of both parties in domestic relations cases by A JA of a single office is discouraged. Every effort will be made to refer one of the parties to another legal assistance officer or to a local civilian attorney. Where a matter is uncontested, legal assistance in preparing necessary documents for submission to local courts may be given if permitted by the SSJA.

(2) Wills and estates. Legal advice, counseling, and the drafting of wills, where necessary, may be provided. However, complex estates involving complicated tax and trust provisions should be referred to specialists in the civilian community.

(3) Adoptions and name changes. Legal advice and counseling may be provided regarding adoption and change of name will be given. Assistance in assembling necessary documentation and, if appropriate, preparing pleadings may be provided if permitted by the SSJA.

(4) Nonsupport and indebtedness. Individuals may be given counseling and advice about claims pending against them. Advice and assistance may also be provided to personnel wishing to make complaints of nonsupport or indebtedness. Correspondence, telephone contacts, and referral to other sources of assistance may be made on behalf of the eligible person.

(5) Taxes. Individuals wanting tax guidance should get initial assistance from unit tax officers. A JA may give general advice and assistance about federal, state and local taxes if qualified to do so. Tax forms may be made available for filing returns and related petitions and appeals. A JA is authorized to complete income tax forms when the eligible person, after appropriate guidance, is unable to personally complete them. However, a JA is specifically prohibited from signing as the "paid preparer" of tax forms. Eligible persons who want actual "preparation" of their tax forms will be referred to local civilian tax services. Tax information and training sessions, including those conducted by federal and state tax authorities, may be sponsored by major commands. When tax assistance is unavailable, the client will be referred to the legal assistance office at Hill AFB.

(6) Landlord-tenant relations and consumer affairs. Legal advice and assistance may be provided to eligible persons in these areas of the law. Simple leases may be drafted as long as such action does not violate paragraph 2-1c.

(7) Civil suits. General advice may be given in civil suit matters even though, in most cases, representation in court is prohibited. The procedures and requirements of small claims courts and other courts of limited or special jurisdiction will be explained in detail. Referral to a civilian attorney may be made if required.

(8) Soldiers' and Sailors' Civil Relief Act (SSCRA). Individuals may be provided details, advice and counseling concerning the provisions of the SSCRA.

(9) Uniformed Services Employment and Reemployment Rights Act (USERRA). Eligible persons may only be provided details and advice concerning the provisions of the USERRA.

(10) Other services. Assistance may be given to eligible persons in matters dealing with powers of attorney, naturalization, citizenship, and insurance. This assistance may include correspondence and document preparation, or limited to office advice on statutes and regulations that apply to the situation. The SJA will determine if assistance is authorized and whether office resources, personnel and expertise are sufficient to support additional services. Every effort to use and maintain DA 2465 (Legal Assistance Interviews Record) should be made by the JA in all cases.

b. While providing services in the above areas of law, a JA may provide the following:

(1) Office counseling. Office counseling consists primarily of providing legal advice to eligible persons.

(2) Negotiation. A JA is authorized to negotiate with adverse parties and to perform all personal functions including court appearances subject to paragraph 2-3 of this regulation.

(3) Document preparation. A JA may prepare and execute appropriate legal documents as well as educate and aid eligible persons with pro se representation. Assistance in pro se matters may include the preparation of documents and letters.

c. Liability. Whenever a JA gives an opinion or states a conclusion of law on behalf of an eligible person to a third party, the JA will ensure that the third party is advised that the JA acts on behalf of the eligible person and not as a representative or official of any headquarters, the Utah National Guard, the United States Army, or the United States Government. This advisement will appear in the text of any letter or any correspondence that requires it. The following wording is suggested:

*"This letter is written on behalf of my client, _____.
It reflects my personal considered judgment as an individual member of the legal profession. It is not to be construed as an official view of the United States Army, the United States Government, or the Utah National Guard."*

d. Referral. A JA may refer eligible persons to other attorneys or other agencies whenever circumstances indicate that referral would be in the best interest of the eligible person. The following factors should be considered when determining whether referral is appropriate:

- (1) Individual attorney workload.
- (2) Availability of personnel or resources.
- (3) Attorney expertise in specific areas of the law.
- (4) Waiting time for an appointment.
- (5) Services otherwise prohibited by this regulation.

(6) Availability of agencies or attorneys for referral. Case referral to attorneys may be made in the following ways:

(a) Military referral. Case referrals to attorneys within the Armed Forces should be considered before referral to a civilian attorney is considered. The best interests of the eligible person are served by military referrals using intra-office and cross-service referral.

(b) Civilian referral. Case referrals to members of the civilian bar should be made, as appropriate, to the eligible person's family attorney or civilian legal organizations (such as public defender, Utah State Bar referral agency, or Utah Legal Services).

(c) Prohibited referral. Once a JA has talked individually and substantively with an eligible person, that JA is prohibited from later representing that eligible person in a private capacity for a fee about the same general matter. A JA is not permitted to refer an eligible person to another attorney expecting to receive actual or constructive compensation or benefit for the referral.

e. Liaison. A JA should serve as liaison with state and local bar programs. Membership in professional organizations, especially local branches involved in providing legal services pertinent to the military community, is encouraged. Attendance at professional meetings and seminars is also encouraged.

f. Direct communication. A JA is authorized and encouraged to communicate directly with another JA whenever necessary and appropriate to promptly resolve an eligible person's problem.

2-2. LIMITATIONS.

- a. The Legal Assistance Program is established for the specific purpose of providing

legal advice and assistance on personal legal problems to eligible personnel. There are matters outside the scope of personal legal problems for which a JA is prohibited from giving legal advice and assistance. These include the following:

(1) Criminal matters. An eligible person accused or suspected of a criminal offense requesting advice from a JA should be informed of the proper procedure for obtaining defense counsel. An eligible person requesting assistance on a military criminal matter will be referred to the SJA. An eligible person requesting legal assistance on a criminal matter that is within the jurisdiction of civilian courts will be referred to a civilian attorney according to paragraph 2-1(d).

(2) Military administrative matters. A JA may not give legal opinions about military administrative matters. Administrative law opinions are the responsibilities of HQ UTARNG. A JA is prohibited from representing an eligible person in any administrative separation action or before any administration separation board unless directed to do so by the SJA. A JA may assist an eligible person prepare rebuttals to other administrative determinations with the approval of the SJA. These rebuttals include actions such as appeals to reports of survey and physical evaluation board determinations.

(3) Claims. An eligible person seeking to file a claim against the United States will be referred to the SJA who will advise the eligible person according to applicable claims regulations. The SJA may only advise a claimant on the probable legal implication of an award which has been tendered, request reconsideration, or file an appeal under a claims statute that provides exclusively an administrative remedy (see Military Personnel and Civilian Employees Claims Act or the Military Claims Act). A JA may not represent an eligible person on a claim or rebuttal after available administrative appeals have ended. The eligible person should be referred to the civilian bar for judicial or other remedies outside those of an administrative nature. In Federal Tort Claims Act cases, a JA may discuss procedural aspects of administrative remedies with the eligible person but is specifically prohibited from discussing the merits or the value of such a claim.

(4) Private income-producing business activities. A JA may not render legal advice or assistance to an eligible person regarding income-producing business activities. Only problems of a personal nature are to be addressed under this program.

2-3. COURT REPRESENTATION. A JA may represent qualified service members in local civilian courts. This paragraph sets forth requirements, policies, limitations and procedures for initiation of such representation and guidelines for the JA providing representation in court.

a. Policy. It is UTARNG policy to ensure that maximum legal assistance services are made available to all eligible persons. Some eligible persons cannot afford the services of a civilian attorney for representation in local courts without causing substantial financial hardship to themselves or their families. A JA is authorized to appear in local civilian courts on behalf of qualified eligible persons, only if approved by the SSJA. Representation in local civilian courts

will be made available only as long as personnel and resources permit. The SSJA is authorized to decline to initiate or to discontinue court representation services upon deciding that:

(1) Personnel or resources are not sufficient to support court representation.

(2) Participation in court representation detracts from the quality or availability of the normal legal assistance services offered.

b. Limitations. Court representation is established for the specific purpose of helping eligible persons with legal assistance services who cannot afford a civilian attorney for representation in court. The following limitations are placed on eligibility for representation in court:

(1) Financial hardship. Representation in civilian courts is available only to those qualified eligible persons and for whom the expense of civilian legal representation would have a substantial financial hardship upon themselves or their families. The SSJA will determine whether an eligible person satisfies the substantial financial hardship test on a case-by-case basis.

(2) Members. Court appearances are limited to the representation of the military or technician members. This limitation is intended to prevent the JA from representing a family member who is pursuing a legal action against an active duty service member of the Armed Forces. It is not intended to prevent representation of a family member who is acting on behalf of a service member on active duty, if the member has designated the family member as his or her agent while the service member is hospitalized, serving an unaccompanied tour, or serving under other special circumstances making court appearance by the service member impractical.

(3) Litigation against the United States. A JA may not represent individuals who seek to bring court action against the United States or a Utah agency or official. Should the circumstances of a particular case indicate that representation by a JA might be appropriate, the SJA must obtain prior approval from the AG.

(4) Fee-generating and prepared representation. Cases which normally would be accepted by a civilian practitioner on a contingent fee or other inherent fee-generating basis and cases where some other individual, business organization, or party is obligated to provide the eligible person with an attorney at no cost to the eligible person should be referred to the civilian bar.

(5) Criminal actions. Court representation services are limited to matters of a civil nature. A JA may not represent eligible persons in criminal actions (whether felony or misdemeanor) in court.

(6) National Guard technicians. DoJ has the sole authority and responsibility to represent the agency as a petitioner (plaintiff), respondent (defendant), or third party in court cases

involving National Guard technicians.

2-4. PREVENTIVE LAW. This paragraph describes the preventive law services to be provided under the program. It prescribes requirements, policies, and procedures for a JA providing preventive law services.

a. Policy. Providing effective preventive law services will decrease the volume of personal legal problems facing military personnel and their families. Preventive law services will result in a saving of man-hours now used for remedial legal assistance counseling. In some instances, these services will save man-hours now being used for processing adverse administrative actions and courts-martial.

b. Guidelines.

(1) A JA may prepare and participate in the active preventive law functions of publicity, education, and training to ensure that service members and their families are informed, at a minimum, about the following legal information:

(a) Counseling services available.

(b) The importance of seeking legal advice before taking action that may lead to adverse civil action: For example, before signing purchase agreements, contracts, leases or divorce settlements.

(c) The rights and privileges granted by laws made to assist the service member.

(d) The rights and privileges of service members and their families as consumers.

(2) A JA is encouraged to cover additional subject matter in providing preventive law services.

(3) A JA may make an aggressive and continuous effort to ensure that active duty members of the Utah Army National Guard and their families are adequately prepared in the event of a deployment.

c. Combat readiness. The JA performs an important function in ensuring the combat readiness of a unit in the event of:

(1) Exercises. During readiness exercises, the JA will educate and advise service members concerning legal documents the service members may need. Appointments will be made for those individuals who require further legal counseling and drafting of legal instruments. Simple documents may be drafted during a readiness exercise if time and conditions permit.

(2) Deployment. In the event of an actual emergency deployment, the JA will educate and advise service members concerning legal documents the service members may need. The JA will draft simple instruments that can be completed and executed during the deployment processing. Follow-up measures should be taken to ensure that individuals provided with instruments under deployment conditions consult the JA upon their return from deployment so that more complete legal counseling may be given.

d. Legal determinations. Under all circumstances, the eligible person, following consultation with a JA, will make the decision whether a document or instrument should be prepared and executed. Documents such as wills and powers of attorney will not be prepared unless the JA determines that they would be legally appropriate under the particular circumstances.

e. Premobilization counseling. Premobilization legal counseling programs are also an important part of readiness for Guard personnel. A JA may give premobilization counseling to personnel according to applicable mobilization and deployment directives.

The proponent of this Regulation is UT-JA. Users are invited to make suggestions for improvement directly to the proponent.

FOR THE COMMANDER-IN-CHIEF:

OFFICIAL

BRIAN L. TARBET
Major General, Utah NG
The Adjutant General

ROBERT S. ADAMSON
COL, GS, UTARNG
Chief of Staff

DISTRIBUTION:
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